IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-573

DENIS M. VACHON,
Appellant,

vs.

THE STATE OF NEW HAMPSHIRE
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF NEW HAMPSHIRE

MOTION TO DISMISS OR AFFIRM

The State of New Hampshire
Office of Attorney General
State House Annex
Concord, New Hampshire 03301

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MOTION

Appellee in the above-entitled case moves to dismiss, on the ground that the appeal does not present a substantial or important federal question, or to affirm, on the ground that the decision below is correct and warrants no further review.

OPINIONS BELOW

The majority and dissenting opinions of the Supreme Court of New Hampshire, handed down on May 31, 1973, are set forth in the Appendix, pp. 1a-7a, of the Jurisdictional Statement of Appellant.

STATEMENT OF THE CASE

The facts of the case are set out in the majority opinion of the New Hampshire Supreme Court and at pp. 4-6 of the Jurisdictional Statement of Appellant.

ARGUMENT

The defendant was charged and found guilty under New Hampshire statutes with wilfully having contributed to the delinquency of a minor by selling or causing to be sold a button to the minor with obscene material printed upon it, that is, the words "copulation not masturbation." As properly reasoned by the New Hampshire Supreme Court, to sustain a violation the

"State need only prove the acts of the defendant could reasonably be found to contribute to cause delinquency by endangering the morals of the minor herself or others." State v. Vachon, 112 N.H. ___. Such proof is a factual issue and the determination of same properly was for the trier of fact, in this case the trial court. Being an issue of fact, it is not subject to review on appeal.

Neither the trial court nor the New Hampshire Supreme Court expressly found that the slogan on the button was obscene. Even if the slogan was not obscene, a conviction is sustainable upon a finding, as set forth above, that the slogan reasonably could contribute to cause delinquency of the minor. No resolution of an obscenity issue, therefore, is a prerequisite in this case to the conviction of the defendant.

Finally, the four to one decision of the New Hampshire Supreme Court impliedly and favorably resolved any constitutional issue of vagueness of the statute.

CONCLUSION

No substantial or important federal question being presented, the appeal should be dismissed. In the alternative, the decision below being correct and not warranting further review, the appeal should be affirmed.

Respectfully submitted,

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October 30, 1973